

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ELIE HARFOUCHE,

Plaintiff,

v.

HAIFA WEHBE, *et al.*,

Defendant.

Case No. 2:13-cv-00615-LDG-NJK

ORDER

The plaintiff, Elie Harfouche, a concert promoter, filed the instant complaint against multiple defendants, including Haifa Wehbe, a Lebanese singer and performer, alleging that Wehbe violated a contractual commitment to perform on a tour throughout the United States and Canada, including in Las Vegas. Magistrate Judge Nancy Koppe has recommended that Wehbe be dismissed from the proceedings because Harfouche had not filed proof that he had properly served Wehbe (#48). Harfouche subsequently filed proof of service (#49, #51). The Court will therefore decline to adopt the recommendation as moot. Wehbe now moves to dismiss the complaint for lack of personal jurisdiction (#52). Defendant Joseph Rahi also moves to dismiss the complaint, arguing that the claims against him are barred by a statute of limitations (#56). Harfouche did not oppose Rahi's motion, but did oppose Wehbe's motion (#54). Rahi's motion to dismiss will therefore be

1 granted. However, because the complaint sufficiently alleges that Wehbe agreed to
 2 perform in Nevada, the Court will deny the motion to dismiss.

3 Motion to Dismiss

4 The defendant's motion to dismiss, brought pursuant to Fed. R. Civ. P. 12(b)(2),
 5 provides that a court may dismiss a complaint for lack of personal jurisdiction. Nevada's
 6 long-arm statute allows jurisdiction in Nevada courts "over a party to a civil action on any
 7 basis not inconsistent with the constitution of this state or the Constitution of the United
 8 States." NRS 14.065(1); *Graziose v. American Home Products Corp.*, 161 F. Supp.2d
 9 1149, 1152 (D. Nev. 2001). The statute has been "liberally construed to reach the outer
 10 limits of federal Constitutional Due Process." *Id.* "A court may exercise personal
 11 jurisdiction over a defendant consistent with due process only if she or he has
 12 'certain minimum contacts' with the relevant forum 'such that the maintenance of the
 13 suit does not offend traditional notions of fair play and substantial justice.'" *Menken v.*
 14 *Emm*, 503 F.3d 1050, 1056 (9th Cir. 2007) (quoting *Int'l Shoe Co. v. Washington*,
 15 326 U.S. 310, 316 (1945)). The Ninth Circuit has established a three-prong test for
 16 analyzing a claim of specific jurisdiction:

- 17 (1) The non-resident defendant must purposefully direct his activities or
 18 consummate some transaction with the forum or resident thereof; or perform
 19 some act by which he purposefully avails himself of the privilege of
 conducting activities in the forum, thereby invoking the benefits and
 protections of its laws;
- 20 (2) The claim must be one which arises out of or relates to the defendant's
 21 forum-related activities and;
- 22 (3) The exercise of jurisdiction must comport with fair play and substantial justice,
 23 that is, it must be reasonable.
Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004).

24 The plaintiff bears the burden of satisfying the first two prongs, after which the
 25 burden shifts to the defendant to "present a compelling case" that the exercise of
 26

1 jurisdiction in Nevada would not be reasonable. *Bancroft & Masters v. Augusta Nat'l Inc.*,
2 223 F.3d 1082, 1086 (9th Cir. 2000).

3 Factual Background

4 In April 2007, Harfouche, currently a resident of New York, entered a contract with
5 Wehbe, a resident of Beirut, Lebanon (#1, ¶¶ 4, 7, & 12). Harfouche agreed to organize
6 and promote a nine-city tour of the United States and Canada, which Wehbe would
7 headline (#1, ¶ 12). The tour was to run from October 10, 2007, through November 30,
8 2007, and included a performance in Las Vegas, Nevada (#1, ¶ 14). Harfouche alleges
9 that after he expended significant expenses to prepare for the tour, and after Wehbe began
10 to tour in Canada pursuant to the contract, Wehbe breached their contract by performing in
11 an entirely separate tour in lieu of completing the tour as contracted for with Harfouche (#1,
12 ¶ 17-18).

13 In 2010, Harfouche filed a similar complaint against Wehbe in the United States
14 District Court for the District of New Jersey, as he was a resident of New Jersey at the time
15 the contract was signed. That complaint was subsequently dismissed for lack of personal
16 jurisdiction. *Harfouche v. Wehbe*, 950 F. Supp. 2d 766 (D. N. J. 2013). Harfouche
17 thereafter filed the instant complaint in Nevada.

18 Analysis

19 The Court finds that it has personal jurisdiction over the defendant in this case. The
20 first prong requires that Wehbe “purposefully direct [her] activities” towards Nevada.
21 According to the Ninth Circuit, “in contract cases, we typically inquire whether a defendant
22 ‘purposefully avails itself of the privilege of conducting activities’ or ‘consummates a
23 transaction’ in the forum, focusing on activities such as delivering goods or executing a
24 contract.” *Schwarzenegger*, 374 F.3d at 802. Here, Harfouche alleges that Wehbe
25 contractually agreed to perform in Las Vegas. This allegation is sufficient. Of particular
26 note, in dismissing the complaint in New Jersey, that court specifically stated that the

1 complaint was dismissed because “none of the concerts were scheduled to take place in
2 New Jersey” *Harfouche* 950 F. Supp. 2d. at 772.

3 Wehbe relies on *Gray & Co. V. Firstenberg Mach. Co., Inc.*, 913 F.2d 758 (9th Cir.
4 1990) for the proposition that the existence of a contract does not, in and of itself, grant
5 personal jurisdiction to a district (#57, 6). This is a broad reading of *Gray*. Rather, *Gray*
6 states that “[a] contract *alone* does not automatically establish the requisite minimum
7 contacts.” *Gray* 913 F.2d at 760 (emphasis added). “Prior negotiations and contemplated
8 future consequences, along with the terms of the contract and the parties’ actual course of
9 dealing are the factors to be considered.” *Id.* citing *Burger King Corp. V. Rudzewicz*, 471
10 U.S. 462, 479 (1985) (internal quotations omitted).

11 In *Gray*, the Ninth Circuit held that specific jurisdiction did not exist where the parties
12 had no prior relationship, the “contract” in question consisted of no more than a few phone
13 conversations, and the contract did not contemplate a future relationship. In the instant
14 complaint, by contrast, Harfouche and Wehbe began a relationship that included multiple
15 negotiation periods and resulted in a complex, written contract. Whereas the contract in
16 *Gray* consisted of a single transaction, the instant contract envisioned an ongoing
17 relationship and a series of events, some of which Wehbe fulfilled prior to her alleged
18 breach. Moreover, while the Ninth Circuit noted in *Gray* that the defendant corporations
19 had no other contact with the jurisdiction at issue, Wehbe has contracted to perform, and
20 has actually performed, in Las Vegas in the years following the alleged breach of contract.
21 Finally, while the contract in *Gray* consisted of a few phone calls, the instant contract

1 includes specific provisions contemplating jurisdiction in U.S. district court.¹ The Court
2 therefore finds that Wehbe has purposefully availed herself of this jurisdiction.

3 Regarding the second prong, the Ninth Circuit “follows the ‘but for’ test.” *Menken v.*
4 *Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007). Resolution of this prong is clear: but for
5 Wehbe’s alleged contractual breach relating to her performances, including the Las Vegas
6 performance, Harfouche would not have been injured.

7 Finally, having decided the first two prongs in the plaintiff’s favor, the burden shifts to
8 the defendant to “‘present a compelling case’ that the exercise of jurisdiction would not be
9 reasonable.” *Schwarzenegger*, 374 F.3d at 802. Wehbe’s motion to dismiss fails to do
10 this. Wehbe cites *FDIC v. British-American Ins. Co.*, 828 F.2d 1439, 1442 (9th Cir. 1987),
11 which presents seven factors to determine the reasonableness of a jurisdiction:

- 12 (1) The extent of the defendant’s purposeful interjection into the forum state’s
- 13 affairs;
- 14 (2) The burden on the defendant of defending in the forum;
- 15 (3) The extent of conflict with the sovereignty of the defendant’s state;
- 16 (4) The forum state’s interest in adjudicating the dispute;
- 17 (5) The most efficient judicial resolution of the controversy;
- 18 (6) The importance of the forum to the plaintiff’s interests in convenient and effective
- 19 relief; and
- 20 (7) The existence of an alternative forum.

21
22 ¹ Harfouche argues that Wehbe has waived her right to contest jurisdiction in the
23 United States, because their contract includes the following clause: “Any conflict that may
24 result about interpreting or executing all or some of the items of this contract pertains to
25 specialized courts in Lebanon and the United States of America.” As with the District Court
26 for the District of New Jersey, this Court rejects the argument that this clause amounts to a
waiver of personal jurisdiction. See *Harfouche* 950 F. Supp. 2d. at 771. Instead, the Court
cites this clause solely as a factor in demonstrating that the instant contract was of greater
complexity than the oral agreement at issue in *Gray*, including, specifically, the issue of
jurisdiction.

1 Without weighing any of these factors, Wehbe's motion to dismiss simply concludes
2 by noting "[T]he exercise of jurisdiction over Defendant Wehbe would not be reasonable . .
3 . Defendant Wehbe's conduct in connection with Nevada is not such that she would
4 reasonably anticipate being haled into court in Nevada" (#52, 9:6-9). In her reply to
5 Harfouche's response to her motion to dismiss, Wehbe briefly applies the factors to her
6 situation. She argues that it would be a heavy burden to defend herself in a country other
7 than Lebanon, where she resides; that much of the evidence remains in Lebanon; and that
8 Nevada "likely has no interest in adjudicating a dispute between two nonresidents over a
9 contract not created in the state" (#57, 8:18-26).

10 Considering the factors more fully, however, the Court concludes that it would be
11 reasonable to exercise jurisdiction over Wehbe. For example, (1) Wehbe's actions did
12 amount to a "purposeful interjection" into Nevada; (2) the burden on Wehbe of defending in
13 Nevada is equal to the burden she would experience defending anywhere else in the U.S.,
14 a possibility envisioned within the contract; (3) because Wehbe is not a U.S. resident, there
15 is no conflict with any other state's jurisdiction; (4) Nevada does have an interest in
16 adjudicating disputes over contracts relating to events set to occur within the state; (5)
17 dismissing the claim at this juncture would be highly inefficient for the parties involved, and
18 because the evidence remains outside the country, no other U.S. jurisdiction would be
19 particularly more efficient; (6) having been rebuffed by the first jurisdiction sought, the
20 Court presumes Harfouche believes Nevada protects his "interests in convenient and
21 effective relief;" and (7) because the contract was executed in Lebanon, jurisdiction in any
22 U.S. District Court would of necessity be on similar grounds, and there is therefore no
23 clearly superior alternative.


24 Accordingly,

25 THE COURT **DECLINES** to adopt the Magistrate Judge's Report and
26 Recommendation (#48).

1 THE COURT **ORDERS** that Defendant Joseph Rahi's unopposed Motion to Dismiss
2 (#56) is GRANTED.

3 THE COURT **FURTHER ORDERS** that Defendant Wehbe's Motion to Dismiss for
4 Lack of Personal Jurisdiction (#52) is DENIED.

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7 DATED this 18 day of July, 2014.

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11 Lloyd D. George
12 United States District Judge
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